

THE INDISPENSABLE ROLE OF OMBUDSMAN IN ADMINISTRATIVE LAW

MADHUPARNA RAY

GITAM Deemed to be University, Visakhapatnam

**ABSTRACT**

*The word "Ombudsman" is a two-century-old inclusion into the English lexicon. It has its origin in the Swedish language. The concept of having a Legal Representative to look into the functioning of civil servants followed by an endeavor to rectify the lacunae which are causing grievances in the minds of the citizens, and then resolve the issue after a thorough scrutiny of the details, as per the existing law of the land, is the main idea behind the appointment of an Ombudsman.*

*An Ombudsman who is a public official has been conferred with the power to act independently in order to oversee and monitor the various acts undertaken by the Administrative Authorities in the country. The role of an Ombudsman is mammoth as, without them, the administrative mechanism would become inefficient, lethargic, and ineffective, owing to the massive prevalence of corruption everywhere around us. Hence, the Ombudsmen act as a watchdog and ensure that the administrative functions are carried out by these authorities in a systematic and smooth fashion. Therefore, the role of the Ombudsmen is an integral part of Administrative Law.*

*In the present paper on Ombudsman in Administrative Law, the researcher will mainly lay emphasis on the historical background of the concept, the importance of Ombudsman in a democratic setup, the salient characteristics of the scheme, the Ombudsman scheme in the Indian context, the idea of anti-corruption Ombudsman and the concept of Lokayukta with particular emphasis on the state of Andhra Pradesh with the help of case laws and statutory provisions that will define a foundation for this concept under the Law of Administration in the country.*

## INTRODUCTION

The word "Ombudsman" is a two-century-old inclusion into the English lexicon. It is a term of Scandinavian origin which means "a delegate or an agent." It has its origin in the Swedish language<sup>1</sup>. According to Garner, 'Ombudsman is a Parliament's officer whose primary function is to act as an agent of the Parliament with the aim of safeguarding citizens against the misuse of power by the Executive Organ of the Government.'<sup>2</sup> The concept of having a Legal Representative to look into the functioning of civil servants followed by an endeavor to rectify the lacunae which are causing grievances in the minds of the citizens, and then resolve the issue after a thorough scrutiny of the details, as per the existing law of the land, is the main idea behind the appointment of an Ombudsman.

In yesteryears, common people were mainly at the receiving end of public administration. The Public Servants often intimidated and shoved them away without even giving a patient hearing to the problems they have been facing, leave alone addressing those to their satisfaction. The general masses, as a result, were growing more and more reluctant to raise the level and seek out higher officials to do Justice to their issues. Seeking intervention of the Judicial mechanism and going to the Courts of Law for more minor issues were both time-consuming and expensive, hence avoided by ordinary people. But these frustrating experiences collectively caused massive resentment towards bureaucracy and public administration. Consequently, a dire need was felt to transform the society from strict implementation of the law to one more inclined towards public welfare. This problem persists in both developed as well as in the developing countries; however, more acute amongst the latter.

## HISTORICAL BACKGROUND

The custom of appointing an Ombudsman was first introduced in Sweden way back in 1809, followed by other Scandinavian nations like Finland (1919), Denmark (1955), and Norway (1961).

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<sup>1</sup> Prof. Dr. Mirlinda Batalli, "Role of Ombudsman Institution over the Administration," (Nov 2015), Academic Journal of Business, Administration, Law and Social Sciences, ISSN 2410-3918, (available at [https://www.researchgate.net/publication/314539863\\_Role\\_of\\_Ombudsman\\_Institution\\_Over\\_the\\_Administration](https://www.researchgate.net/publication/314539863_Role_of_Ombudsman_Institution_Over_the_Administration)) (last visited March 21, 2021)

<sup>2</sup> Md. Awal Hossein Mollah, "Ombudsman for Bangladesh, Theory, and Reality," (Oct 2004), International Journal of Public Administration 27(11-12):979-1002, (available at [https://www.researchgate.net/publication/272572892\\_Ombudsman\\_for\\_Bangladesh\\_Theory\\_and\\_Reality](https://www.researchgate.net/publication/272572892_Ombudsman_for_Bangladesh_Theory_and_Reality)) (last visited March 21, 2021)

Later on, other European Nations joined the league. Britain introduced this system in 1966. Most countries across different continents followed suit within a short span of time<sup>3</sup>.

In Sweden, an Ombudsman had the power to inquire if a person lodged a complaint or even on his own accord. So, he was conferred with the ability to proceed with the suo motu investigation. He had the power to file a complaint to the Parliament regarding not only government officials but even against ministers if such complaints were received. They were vested with the authority to oversee the inclusive administration of the state. Also, complainants had the freedom to file their respective grievances to the ombudsmen directly. This made the approach straightforward and effective. But, in England, complaints with regard to the administration could not be made directly to the ombudsmen. One had to approach any member of the House of Commons who, in turn, would relay their complaint to the Ombudsman.

In Australia, with the Ombudsman Act, 1976, a two-tier method was adopted. In this kind of system, ombudspersons are of two levels, namely, one belonging to the Central Level and one belonging to the State Level.

## **IMPORTANCE OF OMBUDSMAN SCHEME IN A DEMOCRATIC SETUP**

The world today is dotted with Democratic nations, across all the Continents, who have fought fierce battles against the atrocities of colonization and foreign rule; sacrificed millions of lives, endured havoc draining out of wealth and natural resources, and in the long run, attained independence from the shackle of outside control of their life and living. There has been a paradigm shift from the rule of the Aristocrats, Feudal chieftains, and Colonial Masters to the rule of the masses. Today we take great pride in defining the term "Democracy" as a form of Government for the people, by the people, of the people.

Since these people have witnessed and suffered massive dishonor, destruction, and bloodshed, in order to attain independence for their respective nations, they want to ensure the golden principles of equality and freedom in every sense of those terms, for themselves and for future generations, through the framing of Constitution and closely monitoring the implementation of the laws enshrined therein. Also, there is a growing awareness towards the rights of an individual,

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<sup>3</sup> Supra note 1

and there are visible reactions and intolerance towards actions on the part of civil authorities which bear stamps of negligence or corruption<sup>4</sup>. Seeking immediate intervention and appropriate modifications or rectifications is the practice of the day.

So today, most of the Governments are genuinely concerned about imparting good governance to the citizens of their respective countries. They try to avoid gross indulgence in malpractices which would be enough reason to block them from coming to power in subsequent election procedures. Yet, it is not possible for the Judiciary of any nation to cater to public grievances of all the people, primarily those of smaller weightage or those which can be resolved through mediation or minimum intervention by some competent authority. This is where the concept of Ombudsman or Vigilance authorities step in<sup>5</sup>. They are usually senior persons from the domains of law and administration who are considered highly competent to resolve disputes between the civil authorities and the general public.

The causes of such disputes could range from wrong interpretation of rules to lack of communication between the parties or sheer negligence. Such cases are found in the fields of Banking, Non-Banking Financial Institutions, Insurance, Taxation, Electricity, Healthcare, Education, Civil Administration, etc. They are usually of personal nature, and in most cases, a sincere study of the details of the conflict and thorough knowledge of rules can sort out the issues amicably for all concerned.

## SALIENT FEATURES OF THE OMBUDSMAN SCHEME

1. The complainant is not mandated to provide evidence or prove all the allegations before the Ombudsman. In this situation, the Ombudsman performs the role of the petitioner's lawyer and would make the necessary inquiries.
2. In this case, the complainant would not require to pay the Court fee that he would have been bound to pay had he approached the Court with his matter. This makes this scheme cost-effective and an approachable solution for the public in general.
3. An Ombudsman is not vested with the authority to give an order or decision, but he can merely recommend the concerned department to action the necessary follow-up action that is

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<sup>4</sup> Gary Sander, "Ombudsman and Local Governments," (Jun 2013), (available at [https://www.researchgate.net/publication/281283594\\_Ombudsman\\_and\\_Local\\_Governments](https://www.researchgate.net/publication/281283594_Ombudsman_and_Local_Governments) ) (last visited March 21, 2021)

<sup>5</sup> Supra note 1

essential for the case at hand. Many legal researchers are of the view that due to this given restriction, the Ombudsman is compared to a watchdog that has the ability to bark but cannot bite.

4. In case the department concerned in the matter does not take the necessary steps to mitigate the problem at hand, then the Ombudsmen can escalate the issue by reporting the matter to the Parliament.

## OMBUDSMAN SCHEME IN THE INDIAN CONTEXT

An Ombudsman is usually a senior legal or administrative authority duly appointed by the Parliament for a fixed tenure of three service years or till the age of sixty-five, whichever is earlier. The Ombudsman to look after the affairs of the Central Level is called the Lokpal, whereas the Ombudsman to look after the matters in the state level is called Lokayukta. The State Government may also appoint Upa-Lokayukta to work under the supervision of Lokayukta. An Ombudsman's job is to receive public grievances, minutely go through the details of the nature of the complaint and investigate the issue as per prescribed laws and rules, zero in on the points of conflict, and resolve the case through mediation. Thus, once constituted, the institution of the Ombudsman has a say over all three organs of the Government, namely, the Legislature, the Executive, and the Judiciary. In the case of *Pratap Singh v State of Punjab*<sup>6</sup>, the Hon'ble Apex Court of India observed that the courts will not be able to substitute the discretion with that of the official (Ombudsman) who has been conferred with such powers by the Government. The most outstanding aspect is that an ordinary person gets easy and free access to an alternate system of Justice without going to the Court, thus saving his time, energy, and money in the process<sup>7</sup>.

However, this is a relatively new inclusion to our public grievance management system. First, the service of Ombudsman was in the Banking sector, was introduced, as early as 1995, under the able supervision of the Reserve Bank of India<sup>8</sup>. This was followed by IRDA<sup>9</sup> to cater to the Insurance sector.

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<sup>6</sup> Pratap Singh v. the State of Punjab, AIR 1964 SC 72

<sup>7</sup> Bini R.A., "Ombudsman as a Watchdog of Administration in India," International Journal of Science and Research (IJSR) ISSN (Online): 2319-7064, (available at <https://www.ijsr.net/archive/v7i3/ART2018600.pdf>) (last visited March 21, 2021)

<sup>8</sup> Simran Kashyap, "What is Banking Regulation Amendment Bill, 2020: What it means for the banks and customers?" (September 22, 2020), (available at <https://www.oneindia.com/india/what-is-banking-regulation-amendment-bill-2020-what-it-means-for-banks-and-customers-3152659.html>) (last visited March 21, 2021)

<sup>9</sup> Insurance Regulatory & Development Authority of India

The institution of the Insurance Ombudsman was formed by GOI Notification on November 11, 1998, to take care of the grievances of the insured customers speedily. This institution is of paramount importance as it protects the interests of policyholders and thereby restoring their confidence in the system.

## APPOINTMENT OF INDIA'S FIRST ANTI-CORRUPTION OMBUDSMAN

Lokpal and Lokayukta appoint Ombudsman to pinpoint and remove the malfunctioning and malpractices existing in the administration of the Nation. The latest entrant in this list is ex Supreme Court Judge, Justice Pinaki Chandra Ghose, who was appointed as the first Lokpal or the first Anti-Corruption Ombudsman of the Country<sup>10</sup>. In *Justice K.P. Mohapatra v Ram Chandra Nayak*<sup>11</sup>, the Hon'ble Apex Court of India opined that the functions of Lokpal and Lokayukta are of immense value in ensuring proper administration of state and exposing of maladministration so that steps can be taken. It was further held that the inquiry to be performed by Lokpal and Lokayukta is quasi-judicial in nature. It can be expected that the citizens would get a corruption-free power corridor in the years to come since the ambit of this office extends from the Prime Minister to all levels of officers and Government employees. This would strengthen the relationship between the ruler and the ruled over the years. Ordinary masses would not feel insecure about putting up their queries in the strongholds of power in India. As of now, it is pretty early to expect massive outcomes from the activities of this office, but in the near future, we hope to come across a number of brilliant resolutions to some of the significant issues of corruption denting our morale<sup>12</sup>.

## LOKAYUKTA IN ANDHRA PRADESH<sup>13</sup>

The Andhra Pradesh Lokayukta and Upa Lokayukta Act was passed in the Andhra Pradesh State Legislature in the year 1983. Under the provisions of the given act, the office of the Lokayukta was duly created. Justice Avula Sambasiva Rao was appointed as the first Lokayukta for the maiden five-year term. The Jurisdiction of the Lokayukta extends to the Ministers, MLAs, Secretaries, Mayors of

<sup>10</sup> Dr. Arshi Paul Kaur, "Lokpal and Lokayuktas is an Anti-Corruption Law in India," ISSN 2249-3352 (P) 2278-0505 (E), (available at <http://www.pragatipublication.com/assets/uploads/doc/920e0-937-947.16949.pdf>) (last visited March 21, 2021)

<sup>11</sup> Justice K.P. Mohapatra v Ram Chandra Nayak, (2002) 8 SCC 1

<sup>12</sup> K.S. Sudhir Yadav, "Anti-Corruption Movements and Measures in India," International Journal of Trade and Commerce-IIARTC July-December 2015, Volume 4, No. 2 pp. 411-422 ISSN-2277-5811, (available at [https://www.researchgate.net/publication/294860412\\_Anti-Corruption\\_Movements\\_Measures\\_in\\_India](https://www.researchgate.net/publication/294860412_Anti-Corruption_Movements_Measures_in_India)) (last visited March 21, 2021)

<sup>13</sup> Institute of Lokayukta in Telangana and Andhra Pradesh, (available at <https://www.lokayukta.ap.nic.in/>) (last visited March 21, 2021)

the Corporations, and other public servants. Chief Minister, Speaker, Deputy Speaker of the Legislative Assembly, all judicial officers, the accountant general, Public Service Commission Chairman and members, Chief Election Commissioner, and staff of the Legislative Secretariat are excluded from the jurisdiction of the Lokayukta.

The primary object of the act is to control and check the corrupt practices of the executive authorities of the state of Andhra Pradesh. The complaint against the misuse of power by the executive has to be made within five years of such an instance. The Lokayukta has to enquire and submit a report to the competent authority along with recommendations to take necessary action. If the complaint in question is against ministers, then the competent authority is the Chief Minister. If the complaint is against MLAs, then the competent authority is the Speaker, and if the complaint is against Secretary, then the Chief Secretary is the competent authority.

After this procedure, the respective competent authority has to report back to the Lokayukta within a period of three months. If it is observed that the action taken is not satisfactory, then the Lokayukta has the duty to report about the same to the Governor and also to inform the complainant.

The Lokayukta has a duty to submit an annual report to the Governor mentioning its functioning, which can, in turn, be placed before the house by the Governor. It is observed that Lokayukta are not only friends of aggrieved citizens but are also of great help to honest public servants. But in many instances, the system of Lokayukta is found to be ineffective due to faulty and inadequate legislation, non-cooperation by several departments of the Government, etc.

## CONCLUSION AND SUGGESTION

Thus, we can see that India has started taking active steps to fight lethargy and deliberate negligence on the part of civil authorities in some vital aspects of living. Yes, we are moving at a relatively slow pace, but nowadays, we do have some authoritative person, in the form of an Ombudsman, to look up to in case we get caught in the labyrinth of bureaucratic red-tapism and fail to see the light at the end of the tunnel. However, there are some very vital fields of life like Healthcare, Higher Education, Real Estate, and Social Justice for the deserving, etc., where we need Ombudsmen with immediate effect. Also, the inadequacies faced in the system of Lokayukta, like lack of proper cooperation by the Government departments and faulty provisions of statutes, are to be removed in order to ensure

the smooth and effective functioning of Lokayuktas. I hope our Government will consider these sincerely and enable prompt resolution of disputes for the entire Nation soon.

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